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Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL ROOM

In re Applications of)	MM Docket No. 93-241
)	
DARRELL BRYAN)	File No. BPH-920109MA
)	
SBH PROPERTIES, INC.)	File No. BPH-920123MD
)	
)	
)	

For Construction Permit for
New FM Channel 276A
Tusculum, Tennessee

To: Honorable John M. Frysiak
Administrative Law Judge

REQUEST FOR RULING

SBH Properties, Inc. ("SBH") by counsel herewith requests a ruling of the Presiding Judge, precluding Darrell Bryan ("Bryan") from receiving comparative credit for certain of his claimed civic activities, based upon his obstruction of and failure to comply with procedures intended to lead to the discovery and preservation of evidence relevant to those activities. In support whereof the following is shown:

1. Section 1.325(c)(1) provides that in comparative broadcast licensing proceedings, parties shall produce documents responsive to certain standardized categories. Included among those categories is "(x)" which requires the production of "Representative documents relating to enhancement credits and preferences sought by the applicant's principals for local residence, civic participation, past broadcast experience,

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minority status and the like." In his response to category (x) of the Standard Document Production Bryan produced only one document: a copy of the deed to his residence. While that document was certainly responsive as a representative document relating to his residence within the service area, Bryan failed to produce even a single representative document with regard to the civic activities for which he seeks credit in this proceeding.

2. By Order (93M-723), released November 23, 1993, the Presiding Judge granted an unopposed Motion to Compel, directing Bryan to produce within 10 days the documents requested pursuant to SBH's Initial Supplemental Request for Production of Documents, which had been filed on October 5, 1993. Included in SBH's Initial Supplemental Document Request were requests for the production of documents evidencing the nature and extent of Bryan's involvement in civic activities. (See: SBH's Initial Supplemental Request for Production of Documents, Requests Nos. 26, 29) However, when Bryan produced documents in response to the Presiding Judge's Order, he produced no documents relating to his civic participation. Instead he indicated that "Representative documents concerning the nature and extent of Mr. Bryan's participation in civic and community activities has already been produced," despite the fact that only a deed to his residence had been produced in response to the Standard Document Production. Thus, in response to neither the Standard Document Production nor to SBH's Initial Supplemental Document Request did

Bryan produce a single document relating to any of the civic activities for which he seeks credit.

3. When he was deposed on January 12, 1994, Bryan was questioned with regard to each civic activity for which he claimed credit in his Integration and Diversification Statement to determine whether he had any documents which would substantiate his involvement. Almost without exception he indicated that he did in fact have such documents. He also confirmed that the responses contained in his counsel's December 6, 1993, letter were true and correct and that he had been provided a copy of each of SBH's document requests and had been specifically requested by his counsel to search his files and provide copies of any responsive documents. (Depos. 71)

4. In his direct testimony (Bryan Exhibit No. 3), exchanged on January 27, 1994, Bryan seeks credit for participation in the following civic activities: Keep Greene Clean Committee, Greene County Chamber of Commerce (including membership on the Board of Directors, office of President and Chairmanship of the Recruitment Committee), Greene County Fall Fest, March of Dimes, Vocational Technical School, Greene County YMCA Board, Tusculum College Pioneer Club, Junior Achievement, the Greene County Jaycees and a local Little League Baseball Team. ¹/ With

1. With regard to his position as Vice President of Public Affairs for the Chamber of Commerce, he was uncertain whether he had any documents, although he did keep a scrapbook regarding his civic activities and he acknowledged that the Chamber's annual program included a listing of officers and certificates were normally awarded to persons holding that position. (Depos. 40-41)

respect to each of these activities he testified at his deposition that he did in fact have documents demonstrating or substantiating his participation. (Depos. pp. 38-50) Yet, he failed to produce even a single document in response to either the Standard Document Production or SBH's Initial Supplemental Request for Production of Documents relating to any of his claimed civic participation.

6. Clearly, an applicant is not expected to create documents in response to a production request and cannot produce documents which do not exist. Nor is credit for civic participation dependent upon the existence of documentation. However, the Commission's discovery procedures explicitly anticipate that existing documents relating to an applicant's claimed civic participation are relevant, are appropriate subjects of discovery and should be produced. Here, it is irrefutable that Bryan failed to comply either with the requirements of the Standard Document Production or with the Presiding Judge's Order, directing him to produce the documents requested pursuant to SBH's Initial Supplemental Request for Production of Documents, inasmuch as he has acknowledged that he does in fact have documents responsive to both requests.

(Note 1 Con't.)...Likewise, he was uncertain whether he had documents relating to his participation on Finance Committee and Long Range Planning Committee of First Baptist Church, but was certain that the Church would have documents reflecting his involvement. (Depos. 48)

7. While an applicant's failure to respond in good faith to repeated discovery requests for the production of certain documents may or may not provide a sufficient basis for outright disqualification, depending on the circumstances presented by the case, there can be no question that the denial of comparative credit for civic participation is an appropriate sanction for willful and repeated failure to produce even a single document relating to civic participation, despite the demonstrated existence of such documents. Accordingly, the Presiding Judge should issue a ruling, directing that Bryan will be precluded from receiving comparative credit for his claimed participation in civic activities, given his repeated failure to produce documents relating to those aspects of his comparative case.

Respectfully Submitted,

SBH PROPERTIES, INC.

By: 
Timothy K. Brady
Its Attorney

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February 15, 1994

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

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IN RE: APPLICATIONS OF * MM DOCKET NO. 93-241
DARRELL BRYAN * FILE NO. BPF-920109MA
SBH PROPERTIES, INC. * FILE NO. BPF-920109MD
For Construction Permit for *
New FM Channel 276A *
Tusculum, Tennessee *

**DEPOSITION OF
DARRELL BRYAN**

(January 12, 1994)

APPEARANCES:

For Darrell Bryan: J. RICHARD CARR, ATTORNEY

For SBH Properties: TIMOTHY K. BRADY, ATTORNEY

1 A Yes.
2 Q Is that something affiliated with the Chamber
3 of Commerce?
4 A It was started through a program of the
5 chamber, yes.
6 Q Okay. Do you have any documents, you know,
7 which can be any kind of document, I guess, that would substan-
8 tiate the fact that you held the position as chairman of that
9 committee?
10 A I received a certificate. There's probably
11 minutes from many, many chamber meetings.
12 Q You don't have copies of them?
13 A No, I wouldn't ever get those.
14 Q So what you would have would be a certificate
15 then?
16 A Right.
17 Q You didn't have....
18 A When you volunteer there's not a lot of
19 things you get.
20 Q Going to page 5, in the second paragraph you
21 mentioned being on the board of directors for the Chamber of Com-
22 merce. It's Greene County?
23 A Right.
24 Q Is that Greene County Chamber?
25 A Greeneville/Greene County. That's the

1 official title.

2 Q Do you have any documents that would sub-
3 stantiate the fact you held that position as a member of the
4 board of directors?

5 A After three years on the board, when a person
6 goes off they only get a certificate of appreciation plaque,
7 which I've got several plaques. My name is in all kinds of
8 minutes. I was on a lot of committees.

9 Q The next paragraph refers to you being the
10 president of the chamber. Were you compensated in that position
11 or was that....

12 A No, volunteer.

13 Q Totally volunteer. Okay. And you also mention
14 in that same paragraph being the public affairs vice president.

15 A Right.

16 Q And you indicate that you were responsible
17 for initiating meetings.

18 A Right.

19 Q Do you recall how many meetings you're refer-
20 ring to between '88 and '89?

21 A Between '88 and '89 while I was president?

22 Q Oh, I'm sorry.

23 A While I was president, a lot.

24 Q You've corrected me. What I'm asking about
25 is this public affairs vice president. It says you were respon-

1 sible for initiating meetings. The second part of that paragraph
2 is the date I had wrong. It's '89 through '90.

3 A We probably...as chamber president I spent
4 probably three or four or five hours a week, not counting meet-
5 ings, and when I was vice president of public affairs I probably
6 had, I would say, a total of four meetings, one with area legis-
7 lators. I was the moderator. You know, we were responsible for
8 putting the entire meeting together, probably spent in the year
9 probably 20 or 30 hours at least working on that project.

10 Q What you're just referring to, are those the
11 meetings that you're referring to, where it says "initiated meet-
12 ings"?

13 A Yeah,

14 Q That's what I was asking about.

15 A Yes, only those meetings. When I was presi-
16 dent I spent a whole lot more time.

17 Q Do you have any documents like you mentioned
18 before, certificates or plaques or minutes or any other kind of
19 documents that would substantiate the fact that you held the po-
20 sition of president of Greene County?

21 A I've got a plaque. I was glad to get it and
22 get out.

23 Q And what about when you were vice president
24 for public affairs, is there any kind of

25 A They normally awarded a certificate at the

1 annual banquet. I'm not sure if I got one. Again, you go through
2 the chamber program and it always has all the officers listed and
3 vice presidents listed.

4 Q Did you keep anything like a scrap book or
5 resume file that you kept with newspaper clippings and things?

6 A Yeah, I think so.

7 Q Did the chamber ever publish, like a listing
8 of the members of the board or anything of that sort?

9 A Yes. Oh, yes, yes.

10 Q Would you have something like that, copies
11 of that?

12 A I'm sure the chamber would.

13 Q But you don't personally have that, is that
14 what you're telling me?

15 A I'm not positive of what I've kept. I have
16 so much of that that I probably disposed of it. I think I have
17 the year I was president, you know, did all that work. I think
18 I had some information.

19 Q And with respect to public affairs vice pres-
20 ident would that be the same answer?

21 A Yes, whatever. Again, it's listed in the ...
22 you know, they had an annual program they put out and they had
23 projects, all that, that would come out at the annual meeting,
24 and then at the next annual meeting then they would talk about
25 what each committee had done and the time spent and whatever.

1 Q Let's see, the last paragraph on page 5 you
2 refer to being chairman of the retail recruitment committee.

3 A Right.

4 Q In that position did you actually personally
5 recruit businesses, or were you part of formulating a plan? It
6 refers to that and I was just....

7 A Kind of a combination, but basically, offic-
8 ially we could really go out, go to other towns, but we were set-
9 ting up a committee and trying to find out what we needed to do
10 to recruit new retailers, what problems our current retailers
11 had. Again, there was quite a bit of time spent on that. We were
12 losing some retailers because of Wal-Mart, so we were trying to
13 find a way to bring new people in.

14 Q That's fairly common.

15 A Yes.

16 Q So your primary function in that aspect of
17 the chamber was to formulate a plan. Was a plan formulated?

18 A We had various meetings with the retailers,
19 you know, listening to their problems and trying to help have a
20 better environment for retail.

21 Q Would you have received a certificate or have
22 any documents substantiating the fact that you held that position
23 of chairman of recruitment?

24 A It would be on the minutes. I don't know if
25 we kept... some of those committees like that we didn't really

1 keep that many minutes, but on the other hand they would report
2 at various chamber meetings what certain committees did.

3 Q The chamber didn't publish a listing of the
4 different committees and the members?

5 A Of the committee, yeah. Of the committee they
6 did, sure. There would be all that.

7 Q Now the Greene County FallFest, it doesn't
8 indicate specifically, but it says it netted \$50,000 for Chamber
9 of Commerce projects. Was that a Chamber of Commerce activity?

10 A Yes. Greeneville is a very historical town.
11 It was really set up to bring people in. You were mentioning
12 Jonesborough. That's the same type of thing. There were several
13 days of bringing in tourists and generating interest in historic
14 Greeneville.

15 Q Did the radio station participate in the
16 Greene County FallFest?

17 A Did the radio station?

18 Q WSMG is what I'm referring.

19 A It broadcast, yes.

20 Q How does it participate? You said it broad-
21 cast.

22 A Well, number one, we do a lot of public ser-
23 vice announcements promoting the event and the two days of the
24 event the station is on location broadcasting from there. All
25 three radio stations in town. The other two stations in town all

1 broadcast there for that event. We worked together to make sure
2 it got promoted really well.

3 Q With respect to the Chamber of Commerce, are
4 you currently a member of the Chamber of Commerce?

5 A Yes.

6 Q Are you personally a member or is it the
7 station? Is it WSMG or Burley Broadcasting?

8 A At the time WSMG, I think, is the member.

9 Q Do you currently hold any position with the
10 chamber, I mean an office?

11 A As of 1993 I think my term expired. Again as
12 of December 31, '93 my term expired.

13 Q On?

14 A The chamber board.

15 Q Now, what about with respect to your activi-
16 ties and position as chairman of the Greene County FallFest and
17 activities with the FallFest, do you have any documents, cer-
18 tificates or newspaper clippings or whatever, programs or what-
19 ever, that would substantiate your position, being position of
20 chairman....

21 A Sure.

22 Q ...as well as activities you might have been
23 involved in? And I'm talking about you now, not what the radio
24 station would have done.

25 A Yeah. That was totally separate anyway, but

1 I've been chairman since '85 and there's been newspaper articles
2 annually that basically...meetings where I was presiding. You
3 know, some years they try to get them to talk to other people be-
4 sides myself, you know.

5 Q Does the station, the radio station, does it
6 sell advertising in conjunction with the FallFest?

7 A Yes.

8 Q So it does sell advertising as a part of that
9 on location?

10 A Yeah, all three stations do that, yeah.

11 Q Does it do on location...is it doing during
12 FallFest on location in conjunction with particular businesses?

13 A Yes.

14 Q On page 6 you mentioned being chairman of the
15 Greene County March of Dimes.

16 A Yes.

17 Q It indicates an amount of \$50,000. Are you
18 saying here that you raised \$50,000 or that the activities you
19 were involved in raised it?

20 A The year I was chairman they raised over
21 \$50,000.

22 Q The efforts of all?

23 A The efforts of everyone together. The year
24 before I took that it had about almost fallen apart and had not
25 done well.

1 Q I was just trying to clarify that. Do you
2 have any documents substantiating your involvement in that?

3 A I'm sure I do. That's been a long time. Yeah,
4 I know I have a certificate. I'm sure I do, or someone does.

5 Q The next item you list refers to the board
6 of the Vocational Technical High School. Do you see that?

7 A Yes.

8 Q Are you a member of that member?

9 A No longer.

10 Q Excuse me, were you a member of the board at
11 that time?

12 A Yes, I was a member of the board.

13 Q It said association and it wasn't clear to
14 me whether you were actually....

15 A It was actually an advisory council. The vo-
16 cational school at that particular time was having a lot of prob-
17 lems and so we were called in and spent a lot of time trying to
18 ...there was a possibility of even losing the vocational school
19 here in Greene County.

20 Q Was the board you're referring to, does the
21 vocational technical school have a board?

22 A Not per se. An advisory council board.

23 Q Is it a public institution?

24 A Yes. Yes, they work for the school board, but
25 the advisory council was set up as a volunteer organization to

1 help with problems and needs of the vocational school.

2 Q So the advisory council would be business
3 people in the community?

4 A Yes, business people.

5 Q Do you have any documents to substantiate
6 your involvement in that advisory board?

7 A Yes.

8 Q The next item you list has to do with ...
9 well, first off the finance committee for First Baptist Church.

10 A Yes.

11 Q How often did that committee meet during the
12 time you were involved from '86 to '89 on an annual basis, or
13 whatever?

14 A It met monthly. When it came to budget time
15 it met for... several days at a time you'd pitch a tent. About
16 once a year there would be an additional, probably almost several
17 days long of meetings, at budget time.

18 Q And that was consistent throughout that
19 period of time?

20 A Yes, yes.

21 Q You also mentioned another committee, the
22 long range planning committee. What about that? What was the
23 nature of its meetings? How did it meet?

24 A It met initially weekly for several hours a
25 week and, gosh, for probably six or eight months and then we'd

1 have bi-weekly meetings and then we had some other meetings. So,
2 again, a lot of lengthy meetings.

3 Q It says '87 through '88. Was that two years
4 or

5 A It was probably...it was longer than a year.
6 It was probably a year and a half. Thank goodness that was a com-
7 mittee that actually disbanded once it reached its goal. We need
8 more of those.

9 Q With respect to those two committees at First
10 Baptist Church, would you have any documents to substantiate your
11 involvement with either of those?

12 A The church would.

13 Q You wouldn't?

14 A You don't get certificates of appreciation
15 for those, but the church would have documentation, yes.

16 Q The next item carries over to seven as to the
17 board of directors for the Greene County YMCA.

18 A Correct.

19 Q How often did that board meet?

20 A They had a monthly meeting, plus several sub-
21 committees that would meet occasionally.

22 Q What did you do with respect to membership
23 drives?

24 A Call on businesses, contacted people about
25 becoming a member of the Y, did promotion through the radio

1 station, encouraging Y membership.

2 Q Were the membership drives some kind of an
3 annual procedure?

4 A Yes.

5 Q Did you participate in each of the years that
6 you have listed that you were a member of the board?

7 A Yes.

8 Q Do you have any documents to substantiate
9 your involvement in that?

10 A I do.

11 Q The next one is your board of directors of
12 Junior Achievement.

13 A Yes.

14 Q How many times did that board meet?

15 A Four times a year, quarterly. Probably a
16 couple of hours at a time.

17 Q And the Tusculum College Pioneer Club, did
18 that organization have meetings?

19 A Yes.

20 Q How many meetings did you attend during that
21 period of time?

22 A This particular year or

23 Q It says '90 through '91.

24 A I'm still currently on that. They basically
25 met in the spring when they would have a drive, probably, oh, I'd

1 say maybe six or eight meetings.

2 Q I don't know if I asked you about Junior
3 Achievement. Do you have plaques on Junior Achievement?

4 A I have plaques, yes.

5 Q What about the Pioneer Club?

6 A Yes.

7 Q And then the last item on page seven is re-
8 garding the civic activities. Well, there are two items there.
9 In terms of Little League, do you have any documents that would
10

11 A Yes, I do.

12 Q ... substantiate that? I guess I should
13 finish the question.

14 A I'm sorry.

15 Q That's okay. What about the Jaycees, Greene
16 County Jaycees?

17 A Yes.

18 Q It doesn't indicate that you held with the
19 Jaycees any kind of office.

20 A I tried not to.

21 Q Okay. Moving on down to the next section re-
22 garding broadcast experience, on page seven you list two stations
23 that you worked at as an announcer: WEZK in Knoxville and WSKT.

24 A Right.

25 A Do you have any old business cards or other

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A Right.

Q Are there any documents other than the two bank letters that we've looked at earlier that relate to any source of funding?

A No.

Q There was no correspondence with any other banks?

A No, I went straight to Greene County Bank. That's the only one I went to.

MR. CARR: Mr. Brady, I thought I might state for the record, I have this fax where I sent him document descriptions on November 29, 1993. You did ask the question, did he get this list, this attachment (a) list of

MR. BRADY: Right. That's the actual request then that you faxed to him?

MR. CARR: Yes, I actually faxed him the list of documents with a letter in which I said, "Review each category description and search your files to see if there are any responsive documents. The documents must be given to SBH counsel within ten days." You had raised the question whether he had gotten it.

MR. BRADY: Right. Sure. That's good. Thanks very much.

Q Looking at Item 19, it requests for documents relating to costs that would identify payments relating to costs

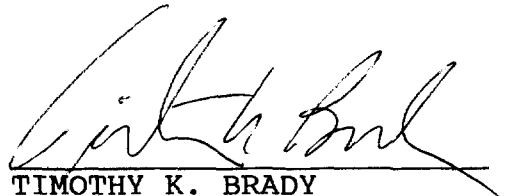
CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have this 14th day of February, 1994, served a copy of the foregoing Request for Ruling by First Class mail, postage prepaid upon the following:

Honorable John M. Frysiak
Administrative Law Judge
Federal Communications Commission
2000 L Street, NW, Room 223
Washington, DC 20554

Robert A. Zuaner, Esq.
Hearing Branch
Federal Communications Commission
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